

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 4, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP273

Cir. Ct. No. 2010CV2642

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**HSBC BANK USA, NATIONAL ASSOCIATION FOR THE BENEFIT OF ACE
SECURITIES CORP., HOME EQUITY LOAN TRUST, SERIES 2006-NC3,
ASSET BACKED PASS-THROUGH CERTIFICATES,**

PLAINTIFF-RESPONDENT,

v.

STEVEN R. LISSE AND SONDRALISSE,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Dane County:
JUAN B. COLAS, Judge. *Affirmed.*

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Steven and Sondra Lisse appeal a summary judgment order that granted foreclosure to HSBC Bank USA. The Lisses contend

that the circuit court erroneously exercised its discretion by denying the Lisses' motion to extend the time to conduct discovery. They then contend that HSBC was not entitled to summary judgment. They also contend that the court erred by denying their motion for reconsideration. For the reasons set forth below, we conclude that the circuit court properly exercised its discretion as to discovery deadlines, that HSBC was entitled to summary judgment, and that the court properly denied reconsideration. We affirm.

¶2 HSBC filed this foreclosure action against the Lisses in May 2010. In March 2014, the Lisses moved for production and inspection of the original note. At a motion hearing held on April 28, 2014, HSBC produced the document that HSBC represented as the original note, endorsed in blank, for inspection. The Lisses did not dispute that HSBC had produced the original note. On the same date, the court set a summary judgment motion and briefing schedule.

¶3 On May 28, 2014, HSBC moved for summary judgment. HSBC submitted a supporting affidavit from the director of Select Portfolio Servicing, Inc. (SPS), sub-servicer for Bank of America, N.A. (BANA), which was HSBC's servicing agent for the Lisses' loan. The employee averred that, in the regular course of her job functions, she was familiar with business records created and maintained by SPS and BANA for servicing mortgage loans; that she reviewed the records for the Lisses' loan and that those records were made in the course of BANA's regularly conducted business activities and were made part of SPS's business records as part of its mortgage servicing business; that HSBC was in possession of the promissory note for the Lisses' loan, endorsed in blank; and that the Lisses were in default on their payments under the terms of their note and mortgage.

¶4 Under an amended briefing schedule, the deadline for the Lisses to file their summary judgment response was August 28, 2014. On August 20, 2014, the Lisses moved to extend the time to file their response by five days to allow them time to obtain a deposition that they asserted would be dispositive of this case. The Lisses filed their summary judgment response, without the purported affidavit, on August 28, 2014.

¶5 The court addressed the Lisses' extension motion at a hearing held on September 12, 2014. The court asked the Lisses to explain the relevance of the additional evidence they wished to pursue. The Lisses argued that they believed they could obtain evidence that another entity rather than HSBC owned the note. The court noted that HSBC had produced the original note, endorsed in blank, at the April 2014 hearing and that, in addition, the time for discovery had passed and the Lisses could have obtained the information they sought prior to the deadline. The court denied the motion to extend the summary judgment deadlines to allow the Lisses to obtain additional discovery. The circuit court granted summary judgment to HSBC. The Lisses appeal.

¶6 The Lisses argue that the circuit court erroneously exercised its discretion by denying their motion during the summary judgment proceedings to extend the time to conduct discovery. See *Kustelski v. Taylor*, 2003 WI App 194, ¶15, 266 Wis. 2d 940, 669 N.W.2d 780 (circuit court decision as to whether and to what extent to enforce its scheduling orders is left to the circuit court's discretion). The Lisses contend that the circuit court should have allowed them additional time to put their evidence in admissible form because that evidence would have defeated HSBC's summary judgment motion by showing that an entity other than HSBC likely owns the note. This argument fails at the outset. A person in possession of a negotiable instrument endorsed in blank is entitled to enforce the

instrument based on possession alone. *See* WIS. STAT. §§ 401.201(2)(km)1.; 403.201(1); 403.205(2); 403.301 (2013-14).¹ Thus, HSBC is entitled to enforce the note because HSBC *possesses* the note, and evidence about the *ownership* of the note is not relevant to that inquiry. Accordingly, the Lisses have shown no basis to disturb the circuit court's exercise of discretion in denying their motion to extend the time to obtain additional evidence.

¶7 Next, the Lisses contend that the circuit court erred by granting summary judgment to HSBC because HSBC's supporting affidavit did not show the affiant's basis for her personal knowledge that the note possessed by HSBC is the original note. We disagree. The affidavit states that counsel for HSBC possesses the original note, as produced in court on April 28, 2014, and that a true copy of the original is attached. The undisputed facts in the record show that HSBC possesses the original note, endorsed in blank. As set forth above, HSBC is therefore entitled to enforce the note.

¶8 Finally, the Lisses contend that the circuit court erred by denying their motion for reconsideration. According to the Lisses, the court at the motion hearing erroneously engaged in fact finding when it found that counsel for HSBC was in possession of the original note. The Lisses cite *Preloznik v. City of Madison*, 113 Wis. 2d 112, 116, 334 N.W.2d 580 (Ct. App. 1983), for the proposition that "[s]ummary judgment methodology prohibits the [circuit] court from deciding an issue of fact. The court determines only whether a factual issue exists, resolving doubts in that regard against the party moving for summary

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

judgment.” However, the Lisses do not develop an argument that the court resolved an issue of fact *that was in dispute* in order to decide the summary judgment motion. Rather, the court granted summary judgment to HSBC because the court correctly concluded that the undisputed facts established that HSBC had physical possession of the original note. To the extent the Lisses are arguing that they were entitled to reconsideration because at the reconsideration hearing their counsel disputed that HSBC’s counsel produced the original note, we reject that contention. It was not enough to complain. There needed to be some evidentiary basis for the complaint.

¶19 We note that, throughout the Lisses’ briefs, the Lisses contend that HSBC is perpetrating a “fraud” upon the courts and that courts should not reward “thieves” attempting to enforce notes they do not own. We do not respond to the parts of the Lisses’ briefs that are unsupported by citations to legal authority or the record. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

